

IN THE COURT OF APPEAL OF TANZANIA

LIBRARY FB ATTORNEYS

AT MOROGORO

(CORAM: WAMBALI, J.A., MAIGE, J.A. And FELESHI, J.A.)

CIVIL APPEAL NO. 11 OF 2025

COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY.....APPELLANT

VERSUS

DR. ERASMO NYIKA (LIQUIDATOR OF
BROOKSIDE DIARY TANZANIA LIMITEDRESPONDENT
(Appeal from the Judgment and Decree of the Tax Revenue
Appeals Tribunal at Dar es Salaam)

(Herbert, Vice Chairperson)

Dated the 14th day of February, 2025

in

Tax Appeal No. 29 of 2023

.....

JUDGMENT OF THE COURT

4th & 10th December, 2025

WAMBALI, J.A.:

The respondent was aggrieved with the final determination by the appellant of the Value Added Tax (the VAT) on imported UHT milk for the period from 1st July, 2015 to 30th September 2015 and January 2012 to December 2016. In the respective determination, the respondent was served by the appellant with a demand note for TZS. 88,420,998.35 and TZS. 553,641,495.94, respectively. The discontent prompted the appellant to prefer VAT Appeal No. 191 of 2017 and VAT Appeal No. 1 of 2018 before the Tax Revenue Appeals Board (the TRAB). At the trial, the two appeals were accordingly consolidated.

At the conclusion of the hearing, the TRAB, made a finding that the respective appeals had no merits. It thus dismissed them with no order as to costs.

On appeal to the Tax Revenue Appeals Tribunal (the TRAT), in Tax Appeal No. 29 of 2023, the decision of the TRAB was overturned and therefore, a finding in favour of the respondent was made. Basically, the TRAT declared that, the VAT assessment issued against the respondent by the appellant in respect of the disputed imported UHT milk was erroneous. Consequently, the TRAT directed the appellant to amend its tax record appropriately.

The dissatisfaction of the appellant with the decision of the TRAT prompted the instant appeal which is premised on four grounds of appeal.

It is noteworthy that, considering the nature and context of the decision which we intend to give in determining this appeal, we do not deem it appropriate at this juncture, to reproduce the respective grounds of appeal. We do not also find it important to revisit in detail the relevant material facts concerning the dispute of the parties before the TRAB and the TRAT.

At the hearing of the appeal, Mr. Moses Kinabo, learned Principal State Attorney assisted by Ms. Grace Letawo and Mr. Amon Meja, learned

Principal State Attorney and State Attorney, respectively, appeared for the appellant, whereas Mr. Thompson Mathew Luhanga, learned advocate represented the respondent.

At the outset, it was apparently noted, upon thorough perusal of the record of appeal that, though the appellant who was by then the respondent had on 18th April, 2023 lodged before the TRAT a notice of preliminary objection comprising three points of law essentially on the timeliness of the appeal which was before it, there is no indication on the record that a decision on the same was made by the Vice Chairperson as required by law.

The record of appeal however clearly indicates that in her written submissions in support of the preliminary objection which was lodged on 30th November, 2023, the appellant abandoned two points of objection and remained with one point regarding the time limit. Notably, the current respondent also lodged written submissions on 18th December, 2023 opposing the preliminary objection. It is further noteworthy that parties also lodged written submissions for and against the appeal. More importantly, the record of appeal bears testimony that members of the TRAT also offered their respective opinions regarding the merits or otherwise of the preliminary point of objection.

Nevertheless, the record of appeal contains only the judgment of the TRAT which is silent on the status of the raised preliminary objection. Besides, there is no ruling to reflect that a decision on the raised point of law was made separately before the Vice Chairperson composed the judgment.

In this regard, we required counsel for the parties to comment on the propriety of the failure by the TRAT to dispose off the preliminary objection which related to the competence of the appeal before it proceeded to determine the appeal on merit.

In response, both Mr. Kinabo and Mr. Luhanga concurrently conceded that the record of appeal contains nothing regarding the decision on the preliminary objection. They equally concurrently submitted that failure by the TRAT to determine the preliminary objection rendered the judgment on the merits of the appeal invalid.

In the circumstance, the learned counsel prayed concurrently that the respective judgment be nullified and the decree set aside followed by an order of the Court remitting the file in the Tax Appeal No. 29 of 2023 to the TRAT for determination of the preliminary objection in accordance with the law.

Having heard the counsel for the parties and thoroughly perused the record of appeal placed before us, we entirely agree with their concurrent submissions that there is no evidence on the record that, the TRAT delivered a ruling in respect of the preliminary objection which was raised by the appellant regarding the competence of the appeal on the contention of it being time barred.

We further apparently noted that on 27th November, 2023, the TRAT had ordered the parties to file written submissions for and against the raised preliminary objection, and in the end, it made an order directing that the ruling was reserved and had to be delivered on notice. Unfortunately, there is no further disclosure in the record of the appeal showing whether the ruling was ever delivered to the parties before the TRAT composed the judgment. This was a fatal irregularity which vitiated the judgment.

It is settled that wherever a preliminary point of objection is raised by a party before a court of law, it must be determined in accordance with the law before the determination of the substantive dispute between the parties on merit is made. For this stance, see **Shadida Abdul Hassan Kassam v. Mahed Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999 (unreported), **Sabrin Ali Jaffar v. Fatma Tangawizi Ngura and Masoud Omar Masoud** (Civil Appeal No. 299 of 20190 [2021] TZCA 714 (2 December 2021, TANZLII) and **Thabit Ramadhan Maruku and**

Antoher v. Amina Khamis Tyela and Another (Civil Appeal No. 98 of 2011) [2011] 223 (7 December 2011, TANZLII), among other decisions of the Court.

It is instructive to note that in the later decision, the Court, in an akin situation, particularly stated as follows on the importance of courts to dispose off the preliminary objection first:

"The trial court was duty bound to dispose of it fully by pronouncement of the Ruling before dealing with the merits of the suit. This it did not do. The result is to render all the proceedings a nullity".

Similarly, in the appeal at hand, as the parties had been duly and fully heard by presentation of the written submissions for and against the raised point of the preliminary objection, the failure by the TRAT to deliver the ruling on the matter, rendered the judgment on the appeal before it, the subject of this appeal, a nullity. Indeed, a miscarriage of justice was occasioned to the parties.

It is emphasized that since the preliminary point of objection intended to contest the competence of the appeal on the time limit, the TRAT was legally enjoined to determine it before determination of the appeal on merit. To this end, the judgment is vitiated resulting in being nullified and its decree set aside.

In the circumstances, in terms of section 4 (2) of the Appellate Jurisdiction Act, Cap 141, we nullify the impugned judgment and set aside the decree for being a nullity.

Consequently, we remit the file in Tax Appeal No. 29 of 2023 to the TRAT for prompt determination of the preliminary objection in accordance with the law before determining the appeal on merit.

Finally, as parties were at one that considering the circumstances, each party should bear its own costs, we make an order to that effect.

DATED at **MOROGORO** this 8th day of December, 2025.

F. L. K. WAMBALI
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

E. M. FELESHI
JUSTICE OF APPEAL

The Judgment delivered this 10th day of December, 2025 in the presence of Mr. Moses Kinabo, learned Principal State Attorney assisted by Mr. Abdillah Mdunga, learned State Attorney for the appellant; Mr. Yohanes Konda, learned counsel for the respondent and Ms. Jasmin Kazi, Court Clerk, linked via video conference; is hereby certified as a true copy of the original.




A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL